

INTERPRETER

**U.S. District Court [LIVE]
Western District of Texas (El Paso)
CRIMINAL DOCKET FOR CASE #: 3:24-mj-02028-MAT-1**

Case title: USA v. Pena Rojas

Date Filed: 05/17/2024

Assigned to: Judge Miguel A. Torres

Defendant (1)

Deivy Santiago Pena Rojas

represented by **Alejandro Rafael Almanzan**
Office of the Federal Public Defender
700 E. San Antonio Ave.
D-401
El Paso, TX 79901
(915) 534-6525
Email: alex_almanzan@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
*Designation: Public Defender or Community
Defender Appointment*

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Disposition

Terminated Counts

None

**Highest Offense Level
(Terminated)**

None

Disposition

Complaints

18:371.F--CONSPIRACY TO
COMMIT BANK THEFT

Disposition

Plaintiff

USA

represented by **Stanley Michael Serwatka**
Assistant United States Attorney

700 East San Antonio Street
 Suite 200
 El Paso, TX 79902
 (915) 534-6881
 Fax: 915/534-3418
 Email: stanley.serwatka@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/17/2024	<u>1</u>	Arrest (Rule 5/Rule 32.1) of Deivy Santiago Pena Rojas (Attachments: # <u>1</u> Affidavit, # <u>2</u> SEALED, # <u>3</u> SEALED)(bg2) (Entered: 05/20/2024)
05/17/2024	<u>2</u>	ORDER APPOINTING FEDERAL PUBLIC DEFENDER. Signed by Judge Miguel A. Torres. (bg2) (Entered: 05/20/2024)
05/17/2024	<u>3</u>	Minute Entry for proceedings held before Judge Miguel A. Torres: Initial Appearance in Rule 5(c)(3)/ Rule 32.1 Proceedings as to Deivy Santiago Pena Rojas held on 5/17/2024 NO BOND SET (Minute entry documents are not available electronically.), SPANISH Language Interpreter (L. Quevedo) required as to Deivy Santiago Pena Rojas (Court Reporter ERO.) (bg2) (Entered: 05/20/2024)
05/17/2024		ORAL ORDER OF TEMPORARY DETENTION: NO BOND SET as to Deivy Santiago Pena Rojas by Judge Miguel A. Torres. (bg2) (Entered: 05/20/2024)
05/17/2024	<u>4</u>	ORDER SETTING IDENTITY / PRELIMINARY / DETENTION HEARING as to Deivy Santiago Pena Rojas, (Detention Hearing set for 5/22/2024 09:00 AM before Judge Miguel A. Torres, Identity Hearing set for 5/22/2024 09:00 AM before Judge Miguel A. Torres, Preliminary Hearing set for 5/22/2024 09:00 AM before Judge Miguel A. Torres), Order Regarding Due Process Protections Act as to Deivy Santiago Pena Rojas. Signed by Judge Miguel A. Torres. (bg2) (Entered: 05/20/2024)
05/20/2024	<u>5</u>	NOTICE OF ATTORNEY APPEARANCE Stanley Michael Serwatka appearing for USA. . Attorney Stanley Michael Serwatka added to party USA(pty:pla) (Serwatka, Stanley) (Entered: 05/20/2024)
05/20/2024	<u>6</u>	NOTICE OF ATTORNEY APPEARANCE: Alejandro Rafael Almanzan appearing for Deivy Santiago Pena Rojas . Attorney Alejandro Rafael Almanzan added to party Deivy Santiago Pena Rojas(pty:dft) (Almanzan, Alejandro) (Entered: 05/20/2024)
05/21/2024	<u>7</u>	Waiver of Identity, Preliminary, and Detention Hearing by Deivy Santiago Pena Rojas (Almanzan, Alejandro) Modified on 5/22/2024 (bg2). (Entered: 05/21/2024)
05/22/2024	<u>8</u>	ORDER REGARDING RULE 5 HEARINGS AND ORDER OF REMOVAL as to Deivy Santiago Pena Rojas. Signed by Judge Miguel A. Torres. (bg2) (Entered: 05/22/2024)

SEALED

AO 91 (Rev. 11/11) Criminal Complaint

FILED

MAY 15 2024

COURT

AT ____ O'CLOCK

John M. Domurad, Clerk - Syracuse

FILED

May 17, 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Fidel Morales

DEPUTY

UNITED STATES DISTRICT
for the
Northern District of New York

UNITED STATES OF AMERICA)

v.)

DEIVY SANTIAGO PENA ROJAS)

))

))

))

))

Defendant(s)))

Case No. 5:24-cr-MAT-243 (Jws)

EP:24-M-02028-MAT
Rule 5**CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief. On or about the date(s) of December 2023 in the county of Onondaga in the Northern District of New York the defendant(s) violated:

Code Section
18 U.S.C. §§ 371 and 2113(b)

Offense Description
Conspiracy to commit bank theft and bank theft.

This criminal complaint is based on these facts:
See attached affidavit.

Continued on the attached sheet.

Complainant's signature

Heather Weber, Special Agent

Printed name and title

Attested to by the affiant in accordance with Rule 4.1 of the Federal Rules of Criminal Procedure.

Date: May 15, 2024

Judge's signature

City and State: Syracuse, New York

Hon. Therese Wiley Dancks, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

I, Heather Weber, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of a criminal complaint charging **DEIVY SANTIAGO PENA ROJAS** (“PENA”) with conspiracy to commit bank theft and bank theft in violation of 18 U.S.C. §§ 371 and 2113(b).

2. I am a Special Agent of the United States Department of Justice, Federal Bureau of Investigation (“FBI”), and I am empowered by law to investigate and make arrests for offenses enumerated in Title 18, including 18 U.S.C. § 2113. As such, I am an “investigative or law enforcement officer” within the meaning of 18 U.S.C. § 2510(7). I have been employed as a Special Agent of the FBI since 2014 and am currently assigned to the Albany Division, Syracuse Resident Agency. While employed by the FBI, I have investigated federal criminal violations related to child exploitation, firearms trafficking, narcotics trafficking, robberies, cybercrime and bank larceny. I have gained experience through training by the FBI and the investigations in which I have personally participated.

3. Based on my training and experience and the facts set forth in this affidavit, there is probable cause to believe that PENA, and other individuals, have conspired to commit bank theft and have committed bank theft, in violation of 18 U.S.C. §§ 371 and 2113(b).

4. I base this affidavit on my experience and on information I have personally reviewed and obtained as the primary case agent on this investigation, and based on information I have received from others, both in person and in documentary form. Since this affidavit is being submitted for the limited purpose of establishing probable cause to support a criminal complaint,

I have not included each and every fact known to me concerning this investigation. I have set forth only the facts I believe are necessary to establish probable cause for the complaint.

THE CONSPIRACY

5. In December 2023, I became aware of reports that several financial institutions in the Northern District of New York had been victims of an automated teller machine (“ATM”) scheme known as “ATM Jackpotting.” ATM Jackpotting involves removing an ATM’s cover and infecting the ATM’s hard drive with malware, which allows the operator to assume control of the ATM and cause it to dispense currency.

6. During the ATM Jackpotting events at issue here, the participants of the scheme worked as teams and utilized at least two vehicles per event. The first team approached an ATM, used a key to access the inside of the ATM, and installed hardware to control the device. The second team arrived after the first team left and started conducting transactions at the ATM. Video surveillance showed that, after the ATM was infected, an individual used a card, entered some information, and the ATM dispensed currency. Bank records reflect that the ATM dispensed money, but each transaction was untethered to any account—thus it was directly stolen from the bank itself.

7. I have confirmed that the ATMs and the currency within the subject ATMs described below was property of the respective bank. During each ATM Jackpotting event, the coconspirators stole thousands of dollars of currency over several hours.

8. PENA, and other individuals all participated in the above-mentioned ATM Jackpotting scheme in the Northern District of New York in December 2023. As noted below, PENA entered the scheme and participated in several ATM Jackpotting events with a group of

individuals traveling within the Northern District of New York in search of vulnerable ATMs.

9. Specifically, as described in more detail below, PENA and his coconspirators successfully completed an ATM Jackpotting event at an Empower Federal Credit Union in Syracuse, New York, on December 10, 2023; and at an Empower Federal Credit Union in Syracuse, New York, on December 11, 2023.

THE FINANCIAL INSTITUTIONS

10. Empower Federal Credit Union is a “credit union” as defined in 18 U.S.C. § 2113(g).

BANK THEFT ON DECEMBER 10, 2023, AT EMPOWER FEDERAL CREDIT UNION ATM, SYRACUSE, NEW YORK

11. Video surveillance showed that, on December 10, 2023, at approximately 9:36 PM, a beige Toyota Corolla bearing a temporary Florida license plate (“SV 1”) approached the drive-up ATM at Empower Federal Credit Union at 3700 West Genesee St., in Syracuse, NY. PENA and Coconspirator #1 (“C1”) exited the vehicle and opened the ATM. Video surveillance showed that PENA and C1 installed a device inside the ATM. SV 1 then drove away from the ATM.

12. At approximately 9:45 PM, a Honda Civic with a Connecticut license plate (“SV 2”) pulled into the drive-up ATM. Coconspirator #2 (“C2”) inserted a card, pressed buttons, and collected dispensed money continuously until 10:35 PM, when SV 2 drove away.

13. At 10:37 PM, Coconspirator #3 (“C3”) drove SV 1 to the ATM. C1 sat in the rear driver’s side seat, lowered his window, conducted transactions, and collected dispensed money until 11:15 PM, when C3 drove SV 1 away from the ATM.

14. At 11:25 PM, C1 drove SV 2 to the ATM. An unknown individual sat in the front passenger seat. C1 conducted transactions, collected the dispensed money, and handed it to the

passenger until approximately 11:55 PM, and then he drove SV 2 away.

15. At 12:01 AM, on December 11, 2023, C1 drove SV 2 to the ATM. When he arrived, he opened the ATM. C1 then returned to the car. PENA then got out of the rear driver's side seat and removed something from the ATM and handed it to C1. The ATM was closed and C1 drove SV 2 away.

16. Empower Federal Credit Union reported that \$134,400.00 was stolen from the ATM during this ATM Jackpotting event.

**BANK THEFT ON DECEMBER 11, 2023, AT
EMPOWER FEDERAL CREDIT UNION ATM, SYRACUSE, NEW YORK**

17. Video surveillance showed that, at 12:17 AM on December 11, 2023, C1 drove SV 2 to a drive-up ATM at Empower Federal Credit Union at 515 Erie Blvd, in Syracuse, New York. There were passengers visible in the front and rear of the car, but they were unidentifiable. C1 exited the car and opened the ATM. C1 then drove SV 2 away.

18. At 12:25 AM, C1 drove SV 2 back to the ATM. C1 and PENA exited the vehicle, unlocked the ATM, and installed something inside the ATM. C1 then drove SV 2 away.

19. At 12:48 AM, C1 drove SV 2 back to the ATM. C1 conducted transactions on the ATM and handed cash to the passenger until 1:24 AM, when he drove SV 2 away.

20. At 1:30 AM, C3 drove SV 1 to the ATM. C3 conducted transactions and collected money from the ATM until 2:10 AM, when he drove SV 1 away.

21. At 2:45 AM, C1 drove SV 2 to the ATM. PENA exited the vehicle, opened the ATM, and removed something from inside. C1 then drove SV 2 away.

22. Empower Federal Credit Union reported that \$150,020.00 was stolen from the

ATM during this ATM Jackpotting event.

CONCLUSION

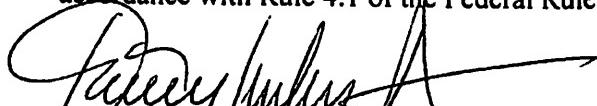
14. Based upon the above information, I respectfully submit that there is probable cause to believe that PENA, and other individuals, have conspired to commit bank theft and have committed bank theft in violation of 18 U.S.C. §§ 371 and 2113(b), within the Northern District of New York as described above.

15. Therefore, based upon the information contained in this affidavit, I respectfully request that this Court to sign the accompanying complaint and requested arrest warrant.

ATTESTED TO BY THE APPLICANT IN ACCORDANCE WITH THE REQUIREMENTS OF RULE 4.1 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

Heather Weber
Heather Weber, Special Agent
Federal Bureau of Investigation

I, the Honorable Therese Wiley Dancks, United States Magistrate Judge, hereby acknowledge that this affidavit was attested by the affiant by telephone on May 18, 2024 in accordance with Rule 4.1 of the Federal Rules of Criminal Procedure.



Hon. Therese Wiley Dancks
United States Magistrate Judge

FILED

MAY 15 2024

AT ____ O'CLOCK
John M. Domurad, Clerk - SyracuseIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**In Re...**
Criminal Complaint

-) Criminal No. 5:24-mj-243 (twd)
-)
-) Government's Sealing Application
-)
-) Filed Under Seal
-)
-) EP:24-M-02028-MAT
-) Rule 5

The United States of America, by and through its counsel of record, the United States Attorney for the Northern District of New York ["NDNY"], hereby applies to the Court pursuant to NDNY Criminal Local Rule 49.2 for the sealing of the following: (a) one or more documents submitted to the Court at the same time as this sealing application, which document(s) request a Court order authorizing certain investigative activity or an arrest warrant; (b) the Court's order authorizing such investigative activity or an arrest warrant; (c) this sealing application; and (d) the Court's sealing order, which has the same caption.

The United States respectfully requests such sealing because public filing of the above-described documents may [*indicate all reasons that apply*]:

<input checked="" type="checkbox"/>	Jeopardize an ongoing federal criminal investigation by revealing the existence of that investigation to potential targets and subjects of the investigation;
<input type="checkbox"/>	Jeopardize the safety of a person who has provided information and/or other assistance to the criminal investigation or the family and/or friends of such person by revealing such person's cooperation with the investigation to those under investigation or their associates;
<input type="checkbox"/>	Jeopardize the safety of law enforcement personnel;
<input type="checkbox"/>	Reveal law enforcement methods, techniques, and/or procedures, thereby jeopardizing future investigations using such methods, techniques, and/or procedures;
<input type="checkbox"/>	Reveal non-public information about one or more victims and/or witnesses and such information could lead to adverse financial and/or social consequences for such person(s);
<input type="checkbox"/>	Reveal non-public information about one or more targets or subjects of the investigation who have not been charged with a crime in the relevant investigation and such information could lead to adverse financial and/or social consequences for such person(s);

<input type="checkbox"/>	Reveal matters in violation of federal law, such as Rule 6(e) of the Federal Rules of Criminal Procedure and/or Title 26, United States Code, Section 6103;
<input type="checkbox"/>	Jeopardize national security.

Along with the above-described documents, the government is filing a redacted version of the proposed sealing order, one that has the words “filed under seal” replaced with the words “for public filing” and has the case caption redacted. The government has no objection to the public filing of this version of the proposed sealing order.

The government further requests the following:

- 1) That the government be permitted to disclose the sealed documents to appropriate law enforcement officials; and
- 2) That the Court order that the above-described documents remain under seal until further order of this Court or any court of competent jurisdiction, except that if the document(s) filed under seal relate solely to a government request for an arrest warrant, that such documents and the warrant be unsealed upon the arrest of the person to be arrested.

If this Court determines that the above-described document(s) should not be filed under seal, the government requests that the Court return the document(s) to the government without filing them publicly.

Dated: May 15, 2024

CARLA B. FREEDMAN
United States Attorney

By: /s Paul Tuck
Paul Tuck
Assistant United States Attorney
Bar Roll No. 520814

FILED**May 17, 2024**CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXASBY: Fidel Morales
DEPUTYIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORKIn Re...
Criminal Complaint

) Criminal No. 5:24-cr-2437ws
)
) Sealing Order
)
) Filed Under Seal
)
) EP:24-M-02028-MAT
) Rule 5
)

The United States of America has applied to the Court pursuant to NDNY Criminal Local Rule 49.2 for an order sealing the following: (a) one or more documents submitted to the Court at the same time as this sealing application, which document(s) request a Court order authorizing certain investigative activity or an arrest warrant; (b) the Court's order authorizing such investigative activity or an arrest warrant; (c) this sealing application; and (d) the Court's sealing order, which has the same caption.

BASED ON THE GOVERNMENT'S APPLICATION, THE COURT ORDERS SUCH SEALING BECAUSE PUBLIC FILING OF THE ABOVE DESCRIBED DOCUMENTS MAY
[indicate all reasons that apply]:

<input checked="" type="checkbox"/>	Jeopardize an ongoing federal criminal investigation by revealing the existence of that investigation to potential targets and subjects of the investigation;
<input type="checkbox"/>	Jeopardize the safety of a person who has provided information and/or other assistance to the criminal investigation or the family and/or friends of such person by revealing such person's cooperation with the investigation to those under investigation or their associates;
<input type="checkbox"/>	Jeopardize the safety of law enforcement personnel;
<input type="checkbox"/>	Reveal law enforcement methods, techniques, and/or procedures, thereby jeopardizing future investigations using such methods, techniques, and/or procedures;
<input type="checkbox"/>	Reveal non-public information about one or more victims and/or witnesses and such information could lead to adverse financial and/or social consequences for such person(s);
<input type="checkbox"/>	Reveal non-public information about one or more targets or subjects of the investigation who have not been charged with a crime in the relevant investigation and such information could lead to adverse financial and/or social consequences for such person(s);

<input type="checkbox"/>	Reveal matters in violation of federal law, such as Rule 6(c) of the Federal Rules of Criminal Procedure and/or Title 26, United States Code, Section 6103;
<input type="checkbox"/>	Jeopardize national security.

THUS, IT IS HEREBY ORDERED THAT THE FOLLOWING ARE TO BE FILED UNDER SEAL: (a) the documents submitted to the Court at the same time as this sealing application, which document(s) request a Court order or warrant authorizing certain investigative activity or an arrest warrant; (b) the Court's order or warrant authorizing such investigative activity or an arrest warrant; (c) this sealing application; and (d) the Court's sealing order, which has the same caption.

IT IS FURTHER ORDERED THAT:

- 1) The clerk of court publicly file only the redacted version of this Court's sealing order;
- 2) The government is permitted to disclose the sealed documents to appropriate law enforcement officials; and
- 3) The above-described documents will remain under seal until further order of this Court or any court of competent jurisdiction, except that if the document(s) filed under seal relate solely to a government request for an arrest warrant, that such documents and the warrant be unscaled upon the arrest of the person to be arrested.

IT IS SO ORDERED.

Dated and entered this 15th day of May, 2024.



Hon. Therese Wiley Dancks
United States Magistrate Judge

FILED

May 17, 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXASBY: Fidel Morales
DEPUTYIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

In Re: Sealing Orders for Public Filing) Criminal No. 5:24-sp-2024
)
) EP:24-M-02028-MAT
) Sealing Order Rule 5
)
) For Public Filing
)
)

The United States of America has applied to the Court pursuant to NDNY Criminal Local Rule 49.2 for an order sealing the following: (a) one or more documents submitted to the Court at the same time as this sealing application, which document(s) request a Court order authorizing certain investigative activity or an arrest warrant; (b) the Court's order authorizing such investigative activity or an arrest warrant; (c) this sealing application; and (d) the Court's sealing order, which has the same caption.

BASED ON THE GOVERNMENT'S APPLICATION, THE COURT ORDERS SUCH SEALING BECAUSE PUBLIC FILING OF THE ABOVE DESCRIBED DOCUMENTS MAY
[indicate all reasons that apply]:

<input checked="" type="checkbox"/>	Jeopardize an ongoing federal criminal investigation by revealing the existence of that investigation to potential targets and subjects of the investigation;
<input type="checkbox"/>	Jeopardize the safety of a person who has provided information and/or other assistance to the criminal investigation or the family and/or friends of such person by revealing such person's cooperation with the investigation to those under investigation or their associates;
<input type="checkbox"/>	Jeopardize the safety of law enforcement personnel;
<input type="checkbox"/>	Reveal law enforcement methods, techniques, and/or procedures, thereby jeopardizing future investigations using such methods, techniques, and/or procedures;
<input type="checkbox"/>	Reveal non-public information about one or more victims and/or witnesses and such information could lead to adverse financial and/or social consequences for such person(s);
<input type="checkbox"/>	Reveal non-public information about one or more targets or subjects of the investigation who have not been charged with a crime in the relevant investigation and such information could lead to adverse financial and/or social consequences for such person(s);

<input type="checkbox"/>	Reveal matters in violation of federal law, such as Rule 6(e) of the Federal Rules of Criminal Procedure and/or Title 26, United States Code, Section 6103;
<input type="checkbox"/>	Jeopardize national security.

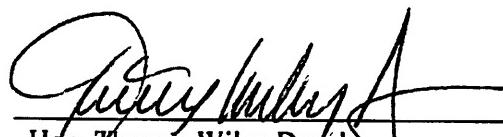
THUS, IT IS HEREBY ORDERED THAT THE FOLLOWING ARE TO BE FILED UNDER SEAL: (a) the documents submitted to the Court at the same time as this sealing application, which document(s) request a Court order or warrant authorizing certain investigative activity or an arrest warrant; (b) the Court's order or warrant authorizing such investigative activity or an arrest warrant; (c) this sealing application; and (d) the Court's sealing order, which has the same caption

IT IS FURTHER ORDERED THAT:

- 1) The clerk of court publicly file only the redacted version of this Court's sealing order;
- 2) The government is permitted to disclose the sealed documents to appropriate law enforcement officials; and
- 3) The above-described documents will remain under seal until further order of this Court or any court of competent jurisdiction, except that if the document(s) filed under seal relate solely to a government request for an arrest warrant, that such documents and the warrant be unsealed upon the arrest of the person to be arrested.

IT IS SO ORDERED.

Dated and entered this 15th day of May, 2024.



Hon. Therese Wiley Dancks
United States Magistrate Judge

FILED**May 17, 2024**CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

AO 442 (Rev. 11/11) Arrest Warrant

SEALED**UNITED STATES DISTRICT COURT**BY: Fidel Morales
DEPUTY

for the

Northern District of New York

United States of America

v.

Case No. 5:24-mj-243(7ws)

DEIVY SANTIAGO PENA ROJAS

DefendantEP:24-M-02028-MAT
Rule 5**ARREST WARRANT**

To: Any authorized law enforcement officer

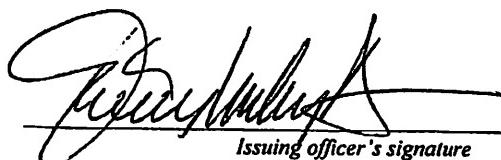
YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay(name of person to be arrested) DEIVY SANTIAGO PENA ROJAS,

who is accused of an offense or violation based on the following document filed with the court:

- Indictment Superseding Indictment Information Superseding Information Complaint
 Probation Violation Petition Supervised Release Violation Petition Violation Notice Order of the Court

This offense is briefly described as follows:

Conspiracy to commit bank theft and bank theft, in violation of 18 U.S.C. §§ 371 and 2113(b).

Date: May 15, 2024


Issuing officer's signature

City and state: Syracuse, New YorkHon. Therese Wiley Dancks, U.S. Magistrate Judge

Printed name and title

ReturnThis warrant was received on (date) _____, and the person was arrested on (date) _____
at (city and state) _____.

Date: _____

Arresting officer's signature

Printed name and title

AO 442 (Rev. 11/11) Arrest Warrant (Page 2)

This second page contains personal identifiers provided for law-enforcement use only and therefore should not be filed in court with the executed warrant unless under seal.

(Not for Public Disclosure)

Name of defendant/offender: DEIVY SANTIAGO PENA ROJAS

Known aliases:

Last known residence:

Prior addresses to which defendant/offender may still have ties:

Last known employment:

Last known telephone numbers:

Place of birth:

Date of birth: 01/28/2002

Social Security number:

Height:

Weight:

Sex:

Race:

Hair:

Eyes:

Scars, tattoos, other distinguishing marks:

History of violence, weapons, drug use:

Known family, friends, and other associates (name, relation, address, phone number):

FBI number: 5ACWLW9TM

Complete description of auto:

Investigative agency and address: FBI

Name and telephone numbers (office and cell) of pretrial services or probation officer (if applicable):

Date of last contact with pretrial services or probation officer (if applicable):

May 17, 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXASBY: Fidel Morales
DEPUTYUnited States District Court
Western District of Texas
El Paso DivisionUnited States of America,
Plaintiff,

v.

Deivy Santiago Pena Rojas,
Defendant.No. **EP:24-M-02028-MAT**
(Northern District of New York
5:24-MJ-243-TWD)**Rule 5****United States' Motion to Detain Defendant Without
Bond and Motion for Continuance**

Comes now the United States of America, by and through the United States Attorney for the Western District of Texas, and pursuant to 18 U.S.C. § 3142(e) and (f), files this, its Motion to Detain Defendant Without Bond and Motion for Continuance, and for cause, would respectfully show unto the Court the following:

1. The Defendant has been charged by criminal complaint for a violation of 18 U.S.C. §§ 371 and 2113(b), *Conspiracy to Commit Bank Theft and Bank Theft*, in Cause No. 5:24-MJ-243-TWD.
2. The Defendant was arrested based on the warrant issued pursuant to the criminal complaint filed in the Northern District of New York.
3. The Defendant is a foreign national and cannot demonstrate sufficient employment, length of residence in the community, or community ties, and, as such, presents a high risk of fleeing the jurisdiction to avoid prosecution on this charge.
4. There are no conditions or combination of conditions which will reasonably assure the safety of the community should the Defendant be released on bond.

5. There are no conditions or combination of conditions which will reasonably assure the appearance of the Defendant at future court settings.

The Government would further move the Court for a three-day continuance of the detention hearing from the date of the initial appearance.

WHEREFORE, premises considered, the Government respectfully prays the Court to hold the above-named Defendant without bail pending the final outcome of this case.

Respectfully submitted,

JAIME ESPARZA
UNITED STATES ATTORNEY

By: Stanley M. Serwatka
STANLEY M. SERWATKA
Assistant U.S. Attorney
Texas Bar #18038400
700 E. San Antonio, Suite 200
El Paso, Texas 79901
(915) 534-6884

FILED

May 17, 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

AO 442 (Rev. 11/11) Arrest Warrant

SEALED

BY:

Fidel Morales

DEPUTY

UNITED STATES DISTRICT COURT

for the

Northern District of New York

United States of America

v.

DEIVY SANTIAGO PENA ROJAS

Defendant

Case No. 5:24-mj-2437ws

EP:24-M-02028-MAT
Rule 5**ARREST WARRANT**

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay
 (name of person to be arrested) DEIVY SANTIAGO PENA ROJAS
 who is accused of an offense or violation based on the following document filed with the court:

- Indictment Superseding Indictment Information Superseding Information Complaint
 Probation Violation Petition Supervised Release Violation Petition Violation Notice Order of the Court

This offense is briefly described as follows:

Conspiracy to commit bank theft and bank theft, in violation of 18 U.S.C. § 371 and 2113(b).

Date: May 15, 2024


Issuing officer's signature

City and state: Syracuse, New York

Hon. Therese Wiley Dancks, U.S. Magistrate Judge

Printed name and title

Return

This warrant was received on (date) 03.15.24, and the person was arrested on (date) 03.16.24
 at (city and state) E. L. PAES, TX.

Date: 03.16.24


Arresting officer's signature

IAN WALLACE FLEENDER, SPECIAL AGENT
 Printed name and title

United States District Court
Western District of Texas
El Paso Division

UNITED STATES OF AMERICA

vs.

(1) DEIVY SANTIAGO PENA ROJAS

§
§
§ No: EP:24-M -02028(1)
§
§

Defendant

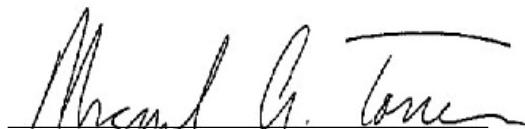
ORDER APPOINTING COUNSEL

The above Defendant has testified under oath, or has otherwise satisfied this Court that he or she is financially unable to employ counsel, and does not wish to waive counsel.

Therefore, in the interests of justice, Federal Public Defender 534-6525, is hereby appointed, pursuant to the provisions of the Criminal Justice Act, to represent said Defendant in this case.

This appointment shall remain in effect until further order of the Court.

It is, accordingly, so **ORDERED** this the 17th day of May, 2024.



MIGUEL A. TORRES
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

USA §
§
vs. § Case Number: EP:24-M -02028(1)
§
(1) DEIVY SANTIAGO PENA ROJAS §

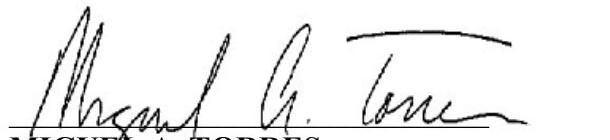
ORDER SETTING IDENTITY / PRELIMINARY / DETENTION HEARING

IT IS HEREBY ORDERED that the above entitled and numbered case is set before the HONORABLE U.S. MAGISTRATE MIGUEL A. TORRES for IDENTITY / PRELIMINARY / DETENTION HEARING, May 22, 2024 at 09:00 AM in Magistrate Courtroom, Room 712 on the 7th Floor of the United States Courthouse, 525 Magoffin Avenue, El Paso, TX.

In accordance with Federal Rule of Criminal Procedure 5(f), as amended by the Due Process Protections Act, Pub. L.No. 116-182, 134 Stat. 894 (Oct. 21, 2020), the Government is hereby notified of and ordered to comply with (1) the prosecutor's disclosure obligations under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, and (2) the possible consequences of violating the Order, which may include sanctions such as delay of trial or other proceedings, the exclusions of evidence, the giving of adverse jury instructions, the grant of new trial, the dismissal of an action, or finding in contempt.

IT IS FURTHER ORDERED that the Clerk of Court shall send a copy of this order to the defendant, counsel for defendant, the United States Attorney, U.S. Pretrial Services, United States Probation Office, and any surety or custodian, if applicable. Further, counsel for the defendant shall notify the defendant of this setting. If the defendant is on bond, he/she shall be present.

IT IS SO ORDERED this 05/17/2024.



MIGUEL A. TORRES
UNITED STATES MAGISTRATE JUDGE

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

USA

vs.

(1) DEIVY SANTIAGO PENA ROJAS

§
§
§
§

NO: EP:24-M -02028(1) MAT

WAIVER REGARDING RULE 5 PROCEEDINGS

I, _____, understand that in the _____ District of _____, I have been charged with violating _____. I have been taken before a United States Magistrate Judge who has informed me of the charge(s) and my right to: (1) retain counsel or request the appointment of counsel if I am unable to retain counsel, (2) request transfer of the proceedings to this district pursuant to Rule 20, Fed.R.Crim.P., in order to plead guilty, (3) an identity hearing to determine if I am the person named in the charge and (4) a preliminary examination (unless an indictment has been returned or an information filed) to determine whether there is probable cause to believe an offense has been committed by me, the hearing to be held either in this district or the district of prosecution.

I HEREBY WAIVE (GIVE UP) MY RIGHT TO:

Identity hearing

Preliminary hearing in El Paso, but I want a preliminary hearing in the prosecuting district

Detention hearing

Detention hearing in El Paso, but I want a detention hearing in the prosecuting district

Date

Defendant

Defense Counsel

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

USA
vs.
(1) DEIVY SANTIAGO PENA ROJAS

§
§
§ NO: EP:24-M -02028(1)
§

**WAIVER OF PRELIMINARY HEARING
AND/OR DETENTION HEARING**
(Rule 5 or 32.1, Fed.R.Crim.P.)

Preliminary Hearing

I , **(1) DEIVY SANTIAGO PENA ROJAS**, charged in a complaint pending in this District, and having appeared before this court and been advised of my rights as required by Rule 5 or Rule 32.1, Fed. R. Crim. P., including my right to have a preliminary hearing, do hereby waive (give up) my right to a preliminary hearing.

Yo, **(1) DEIVY SANTIAGO PENA ROJAS**, el inculpado en una acusacion pendiente en este Distrito, he comparecido ante este Tribunal y me han informado de mi derecho a una audiencia preliminar, cumpliendo con el reglamento 5 o 32.1 de los Reglamentos de Procedimiento Penal Federal, por este medio renuncio a (abandono) mi derecho a una audiencia preliminar.

DEFENDANT

Detention Hearing

I have also been advised of my right to a detention hearing. I have been advised that, at a detention hearing, the court will hear evidence to determine whether I should be held in jail without bond or whether a bond should be set for me. I have been advised that, if I waive (give up) my right to a detention hearing, I will be held in jail without bond while I wait for my trial. I hereby waive (give up) my right to have a detention hearing.

Tambien me han informado de mi derecho a una audiencia para fijar fianza. Me han informado que en la audiencia para fijar fianza, el juez recibira pruebas parar poder determinar si seguire detenido sin fianza, o si me fijaran fianza. Me han informado que si renuncio (abandono) mi derecho a una audiencia para fijar fianza, seguire detenido sin fianza hasta que se me someta a juicio. Renuncio (abandono) mi derecho a una audiencia para fijar fianza.

DEFENDANT

DATE

COUNSEL FOR DEFENDANT



U.S. Department of Justice

*United States Attorney
Western District of Texas*

Stanley M. Serwatka
Assistant United States Attorney

700 E. San Antonio, Suite 200
El Paso, Texas 79901

Phone 915.534.6884
Facsimile 915.534.6024

May 20, 2024

United States District Clerk
Western District of Texas
525 Magoffin Avenue
El Paso, Texas 79901

RE: U.S. v. Deivy Santiago Pena Rojas
Case No.: EP-24-M-02028-MAT

Dear Sir or Madam:

This is to advise you that the undersigned Assistant United States Attorney is currently the attorney assigned to represent the United States in the above-entitled and numbered cause on all matters forthwith. Please update your records to accurately reflect this information.

Thank you for your attention to this matter.

Respectfully submitted,

JAIME ESPARZA
UNITED STATES ATTORNEY

By: /s/ Stanley M. Serwatka
Stanley M. Serwatka
Assistant United States Attorney

(Rule 5)

FEDERAL PUBLIC DEFENDER

WESTERN DISTRICT OF TEXAS

MAUREEN SCOTT FRANCO
FEDERAL PUBLIC DEFENDER

RICHARD C. WHITE FEDERAL BUILDING
700 E. SAN ANTONIO AVENUE, SUITE D-401
EL PASO, TEXAS 79901-7020

TELEPHONE
(915) 534-6525

JUDY F. MADEWELL
FIRST ASSISTANT

TOLL FREE
(855) 666-1510

May 20, 2024

FACSIMILE
(915) 534-6534

REGINALDO TREJO, JR.

EDGAR HOLGUIN
El Paso

SUPERVISORY ASSISTANTS

SAN ANTONIO
AUSTIN
DEL RIO
PECOS
ALPINE

U.S. District Clerk
Albert Armendariz, Sr.
U.S. Courthouse
525 Magoffin Ave.
El Paso, TX 79901

RE: ASSIGNMENT OF DEFENSE COUNSEL IN:

USA vs. Deivy Santiago Pena Rojas
Case No: EP-24-M-2028-MAT

Dear Sir/Madam:

Please be advised that I am the Assistant Federal Public Defender assigned to the above-referenced case.

Very truly yours,

MAUREEN SCOTT FRANCO
Federal Public Defender

/S/

ALEX R. ALMANZAN
ASSISTANT FEDERAL PUBLIC DEFENDER

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

USA	§	
	§	
vs.	§	NO: EP:24-M -02028(1) MAT
	§	
(1) DEIVY SANTIAGO PENA ROJAS	§	

WAIVER REGARDING RULE 5 PROCEEDINGS

I, Deivy Santiago Pena-Rejas, understand that in the Northern District of New York, I have been charged with violating 18 U.S.C. §§ 371 & 2113(b). I have been taken before a United States Magistrate Judge who has informed me of the charge(s) and my right to: (1) retain counsel or request the appointment of counsel if I am unable to retain counsel, (2) request transfer of the proceedings to this district pursuant to Rule 20, Fed.R.Crim.P., in order to plead guilty, (3) an identity hearing to determine if I am the person named in the charge and (4) a preliminary examination (unless an indictment has been returned or an information filed) to determine whether there is probable cause to believe an offense has been committed by me, the hearing to be held either in this district or the district of prosecution.

I HEREBY WAIVE (GIVE UP) MY RIGHT TO:

Identity hearing

Preliminary hearing in El Paso, but I want a preliminary hearing in the prosecuting district

Detention hearing

Detention hearing in El Paso, but I want a detention hearing in the prosecuting district

Date

5/01/24

X Dolby

Defendant

Elly O. Diaz

Defense Counsel

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA	§	NO: EP:24-M-2028-MAT
vs.	§	Ref: 5:24-mj-243-TWD
DEIVY SANTIAGO	§	(NORTHERN DISTRICT OF NEW YORK)
PENA ROJAS	§	Syracuse Division
	§	

ORDER REGARDING RULE 5 HEARINGS AND ORDER OF REMOVAL

Deivy Santiago Pena Rojas, Defendant, is charged in a proceeding pending in the Northern District of New York, Syracuse Division for violation of Conspiracy to Commit Bank Theft, in violation of Title 18 §§ 371 and 2113(b). Having been arrested in this district, Deivy Santiago Pena Rojas, was ordered to appear for an identity, preliminary, and detention hearing, on May 22, 2024. Defendant waived his identity, preliminary and detention hearing and requested that the preliminary and detention hearing be held in the prosecuting district.

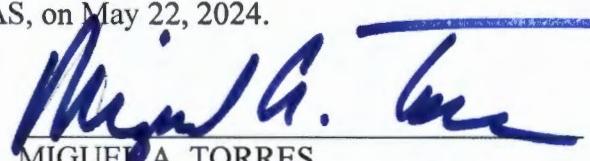
Accordingly, this Court finds that Defendant, Deivy Santiago Pena Rojas, is the Defendant named in the complaint filed in cause number 5:24-mj-243-TWD, out of the Northern District of New York, Syracuse Division. The Court further finds that the Defendant shall be detained.

The Clerk of this Court shall promptly transmit all documents to the charging district.

TO THE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF TEXAS: IT IS ORDERED that the United States Marshal must transport the defendant, together with a copy of this Order, to Northern District of New York, Syracuse Division and deliver the defendant, Deivy Santiago Pena Rojas to the United States Marshal for that district, or to another officer authorized to receive the defendant.

The Marshal or officer in the charging district should immediately notify the United States Attorney and the Clerk of Court for that district of the defendant's arrival so that further proceedings may be promptly scheduled.

SO ORDERED in EL PASO, TEXAS, on May 22, 2024.



MIGUEL A. TORRES
UNITED STATES MAGISTRATE JUDGE